



DEPARTMENT OF THE NAVY

COMMANDER
U.S. FLEET FORCES COMMAND
1562 MITSCHER AVENUE SUITE 250
NORFOLK, VA 23551-2487

5720

Ser N00P1(2012-26)/ 020

21 May 12

Mr. Michael Morisy
MuckRock News
DEPT MR 383
P.O. Box 55819
Boston, MA 02205-5819

Dear Mr. Morisy:

This letter responds to your Freedom of Information Act (FOIA) request for copies of the video messages recorded or produced by the Executive Officer of the USS ENTERPRISE (CVN 65) in 2006 and 2007, dated January 3, 2011. U.S. Fleet Forces Command (USFF) received your request on May 10, 2012, and assigned case file number CFFC 2012-26.

In your letter, you also requested a fee waiver and assert the request is "in the public interest" submitted by "a representative of the news media/press" who will "provide the videos to the public at free of charge."

The Department of the Navy's (DON) regulation (32 CFR 286.28(d)) provides that records shall be furnished without charge if disclosure of the information is in the public interest because it:

- (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and
- (2) Is not primarily in the commercial interest of the requester.

The Department of the Navy considers many factors in making waiver determinations, including whether the contribution to the public understanding will be significant. A contribution to public understanding will be significant if the information disclosed is new or clearly supports public oversight of Department operations.

Upon review, we determined that your justification does not meet the DON's threshold for granting a fee waiver.

Specifically, the information that you seek will not inform the public on DON activities, and the information is already known to the public. Disclosure of duplicative or identical information will add no meaningful new information or contribute to the understanding of the subject by the general public.

Likewise, simply making the information available to the public is not sufficient to qualify for a fee waiver. In accordance with

Department of Justice guidance, a requester seeking *news media* status that does not support its news-dissemination function should not be accorded the fee treatment in this subcategory. Once a FOIA requester has gathered information of interest to the public, it must, in some manner, "use its editorial skills to turn the raw materials into a distinct work in order to qualify as a representative of the news media." Merely posting the documents on a website, or making them available to the public without providing an informative analysis of the information does not qualify for the news media category. See DOJ/OIP, Freedom of Information Act Guide, May 2007 edition, pages 140-146. Therefore, your fee waiver request is denied, and for purposes of fees, your request is being processed in the "other use" category.

Your request was processed under applicable provisions of the FOIA statute, as amended, and the implementing Navy Department directive (SECNAVINST 5720.42F). Portions of the information that you seek are exempt from disclosure under 5 U.S.C. 552(b)(6). In particular, the faces of individuals who are not public figures are redacted because disclosing the information would be a clear and unwarranted invasion of their privacy.

With regard to the videos themselves, we are unable to meet your request of providing the information to you by email attachment or CD-ROMs due to their size. The data totals approximately 22 Gigabites and not all videos can be separated to fit on a CD-ROM. Therefore, to provide you with the information that you seek, USFF proposes loading the data onto a flash drive. If you agree to this arrangement, your total cost will be \$22.00.

Because your request for a waiver of fees has been denied, you may appeal this determination by writing to:

Office of the Judge Advocate General
Department of the Navy
Attn: FOIA Appeals
1322 Patterson Ave, SE, Ste 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be received within sixty (60) calendar days from the date of this letter. A copy of your initial request and this partial denial letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION ACT APPEAL" both on the envelope and the face of the letter and should contain a brief statement of the reasons you believe this initial decision to be in error.

Finally, in accordance with 32 CFR 701.8 (a)(2)(c), we will not proceed further with your request until we receive written notification

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from you stating whether or not you are willing to pay the \$22.00 for the flash drive. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and close the file on your request.

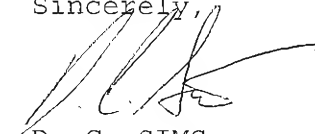
If you agree to pay the assessed fee, you may make the check out to the U.S. Treasury and send to:

Commander
U.S. Fleet Forces Command
Attn: FOIA Coordinator (N00P1)
1562 Mitscher Ave
Norfolk, VA 23551-2487

The package will be put in the mail to you as soon as payment is received.

I am the official responsible for the determination in this request. You may contact Linda Alvers at (757) 836-3630 or at linda.alvers@navy.mil if you require further assistance.

Sincerely,



D. C. SIMS
By direction

Copy to:
Case file
Serial file